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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,932	08/05/2003	Robert D. Harris	RDH-42663	8808
26252	7590	06/26/2006		
KELLY LOWRY & KELLEY, LLP 6320 CANOGA AVENUE SUITE 1650 WOODLAND HILLS, CA 91367			EXAMINER HWANG, VICTOR KENNY	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,932

Applicant(s)

HARRIS, ROBERT D.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☒ Claim(s) 7,9 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date Aug. 5, 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: on page 2, line 6, “care” presumably should be changed to --car--.

Appropriate correction is required.

Claim Objections

2. Claims 7, 9 and 14 are objected to because of the following informalities:

in claims 7 and 14, after the recitation “plurality” the term --of-- presumably should be inserted; and

in claim 9, the claim presumably should depend from claim 8 rather than claim 7, in order to provide proper antecedent basis for the recitation “the elastomeric resistance band”.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-8, 10-14, 16 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by *Staffa* (US Pat. 6,595,904 B1). *Staffa* discloses an exercise device comprising a frame having a base 2a or 2b and first and second pivotal arms 4 extending from opposite ends of the base. The first and second arms are spaced sufficiently to accommodate a user's back to fit therebetween. A plurality of elastomeric resistance bands 8, 8a or 11 extend between the first and second arms 4. The elastomeric bands are positioned such that a user could use them to provide lumbar support and abdominal exercise resistance to movement of a user's back towards the base of the frame.

The first and second arms 4 are selectively pivotal relative to their respective base such that the arms can extend at an angle with respect to their respective base 2a or 2b. Pins 6b are associated with each arm to secure each arm at its selected angle (col. 5, line 66 to col. 6, line 3). The arms can also be collapsed relative to their respective base to allow for easy portability and storage (col. 6, lines 10-14). The elastomeric resistance bands are removably attached to the free ends of respective arms, rather than the pivotal ends of the arms.

5. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by *Chen* (US Pat. 6,436,017 B1). *Chen* discloses an exercise device comprising a frame having a base 10 and first and second arms 12 (see Figs. 2 and 3). A plurality of elastomeric resistance bands 14 extend between the first and second arms. Notches formed on the free ends of each arm 12 are configured to removably accept an end of a respective elastomeric resistance band. The arms 12 are pivotally attached to the base 10 and extend at an angle with respect to the base. Stops 124,192 are associated with each arm 12 to limit pivotal movement of each arm relative to the

base 10. The arms 12 are spaced such that a user's back could fit therebetween. The plurality of elastomeric resistance bands 14 could be used to provide lumbar support and abdominal exercise resistance to movement of a user's back towards the base 10 of the frame (see Fig. 3).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bech (US Pat. 1,170,396), *Linebarger et al.* (US Pat. 1,706,794), *Farrell* (US Pat. 2,182,253), *Kiwad* (US Pat. 2,621,714), *Morgan* (US Pat. 3,178,180), *Bernstien* (US Pat. 3,742,532), *Hong* (US Pat. 5,033,138), *Moye* (US Pat. 5,199,936), *Buoni et al.* (US Pat. 5,514,058), *Castallanos et al.* (US Pat. 6,024,679) and *Burrell* (US Pat. 6,692,417 B2) disclose devices having structure that read upon some of the claims of the claimed invention.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor K. Hwang
June 22, 2006

